

APPENDIX 8.3B

Proposed Native American Burial Protection Plan for the WEC Construction Program

Proposed Native American Burial Protection Plan for the Walnut Energy Center Construction Program

A. Statement of Purpose

The intent of this agreement is to protect Native American burials, isolated human remains, and associated grave objects from destruction during the construction of facilities associated with the Turlock Irrigation District's (TID) Walnut Energy Center (WEC) in Turlock, California.

This agreement applies specifically to the construction of facilities (generating plant site, access roads, pipelines, transmission lines, etc.) associated with the development of the WEC in the City of Turlock and its associated linear facilities in Stanislaus County, California. Because there are no federal lands associated with this project, any and all discovered Native American burials, isolated human remains, and associated grave objects will be treated in accordance with the provisions of the State of California Public Resources Code Section 5097.98 and Health and Safety Code Section 7050.5.

The intent of this agreement is to fulfill the requirements for treatment of human remains that may be specified in any Memorandum of Agreement (MOA) among the California Energy Commission (CEC), the State Historic Preservation Officer (SHPO), the Native American Heritage Commission (NAHC), the City of Turlock (City), Stanislaus County (County), and any other parties concerning this project. Other parties might include state and/or federal agencies that may become involved as a result of project permitting or licensing. TID will provide funding for the project and the CEC has been designated as the lead agency for regulatory compliance.

B. Description of Authority

The coordination of the procedures outlined within this agreement is the responsibility and under the authority of the CEC. As the lead agency for ensuring compliance with the California Environmental Quality Act (CEQA) (and possibly the lead agency for compliance with Section 106 of the National Historic Preservation Act [NHPA] if federal agency participation occurs), the CEC is responsible for guaranteeing that the stipulations of this agreement are carried out.

Section 7050.5 of the California Health and Safety Code stipulates:

(b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance to the site or any nearby area reasonably suspected to overlie adjacent remains until the Stanislaus County Coroner in accordance with Chapter 10 (commencing with

Section 27460) of part 3 of Division 2 of Title 3 of the Government Code, or any other related provisions of law concerning investigation of the circumstances, manner, and cause of death, and the recommendations concerning treatment and disposition of the human remains have been made to the person responsible for the excavation, or his or her authorized representative in the manner provided in Section 5097.98 of the Public Resources Code. The Coroner has to make his/her determination within two working days from the time the person responsible for the excavation or his or her authorized representative, notifies the Coroner of the discovery or recognition of the human remains.

(c) If the Coroner determines that the remains are not subject to his or her authority and if the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

To ensure compliance with this state law, the following procedures will apply.

C. Authority to Halt Construction

1. The construction contract will inform the contractor (and subcontractors) of the possibility of inadvertent discovery of human remains and will require them to avoid damage to such remains by immediately ceasing all disturbing activities at the find location. The field superintendent or equivalent will inform the construction crew regarding the procedures for protection of discovered human remains at the start of the project.
2. The construction field superintendent or his/her designate shall have the authority and responsibility to temporarily halt construction operations within 25 meters of the discovered remains if the location is not being monitored by a TID archaeological consultant or Native American monitor. If a TID archaeological consultant or Native American representative is monitoring the location, then the monitor will have the authority to halt construction within 25 meters of the find. The construction contractor or subcontractor, archaeologist or Native American monitor shall maintain a log of each work stoppage caused by the inadvertent discovery of potential or confirmed human remains, including the date and time that operations are halted and the date and time that authorized construction operations begin again.

D. Procedures When Skeletal Remains are Found

These procedures will be followed for all initial finds at known archaeological sites and in each case for isolated finds outside identified archaeological sites.

1. The archaeologist, Native American monitor, or construction crew member (if the archaeologist or Native American Monitor is not present) shall inform the construction field superintendent that a work crew has been requested to stop work due to the discovery of human skeletal remains.
2. TID shall offer the assistance of a project archaeologist to the coroner to provide information about the discovery that will assist the coroner in determining whether the

remains are those of a deceased Native American. If the coroner has reason to believe that the human remains are those of a deceased Native American, he/she is required by law to contact the State of California Native American Heritage Commission (NAHC) by telephone within 24 hours of their determination.

3. Upon notice that the coroner has determined that the remains are those of a deceased Native American, the project archaeologist will notify the following persons:
 - A. [To be inserted]
 - B. [To be inserted]
 - C. [To be inserted]
4. The archaeologist will contact the NAHC to verify that they have been contacted by the Stanislaus County Coroner and will arrange to receive recommendations from the Most Likely Descendants (MLDs) identified by the NAHC pursuant to Section 5097.98(a) of the California Public Resources Code.

E. Protection While Awaiting Recommendations from Most Likely Descendants

Protection of Native American human burials shall be accomplished by: (1) keeping any discovery confidential; and (2) securing the discovery locality to prevent disturbance of remains and associated materials. Only those persons listed above in Section D will be notified of a find once it has been covered in place or moved in accordance with recommendations of the MLD. Methods to protect a find will include fencing, covering the remains with a protective material and culturally sterile soil or plywood, and if vandalism should be considered a threat, establish a 24-hour site security monitor.

F. Treatment as Recommended by Most Likely Descendants

Human remains will be treated in accordance with recommendations of the MLD identified by the NAHC. In general, the recommendations will follow those set forth below.

1. *Leave In Place.* If the gravesite is located in an area not subject to further disturbance, the remains will be left in place and covered with soil. This is the preferred treatment.
2. *Expose and Remove for Reburial.* If protection against disturbance during project construction or future development cannot be reasonably assured, remains may be removed for reburial with the MLD's consent. An archaeologist with osteological expertise will carefully and respectfully excavate the burial to expose in place the skeletal remains and any associated grave objects in the presence of a Native American monitor.
3. *Store Temporarily.* Each human burial with its associated grave objects will be stored together as a burial unit. A burial unit will be stored in a secure locked room at a location approved by the MLD.
4. *Laboratory Analysis.* There will be no viewing, handling, or analysis of stored burial units unless the MLD has recommended specific analyses.

5. *Reburial*. Human burials with their associated grave objects will be reburied at a location within Stanislaus County.

G. Reporting

The reburial locality will be formally recorded as an “Archaeological Redeposit” with its confidential location shown on a U.S. Geological Survey (USGS) 7.5-minute map. A Burial Treatment Report will be compiled by the project archaeologist and will consist of a list of locations from which burials were removed, individual burials designations, the Archaeological Redeposit Record(s) documenting the reburial location, dates of excavation and reinternment, and individuals (with affiliation) present during reinternment.

The Burial Treatment Report shall be considered a highly sensitive, confidential record and copies will be provided to the MLD and filed with the CCIC, the California Historical Resources Information System (CHRIS), Central California Information Center, California State University - Stanislaus (Turlock), the Stanislaus County Coroner’s office, and with any involved state or federal agencies. Full reporting of human remains will be contained in the Archaeological Data Recovery Report.

H. Curation of Archaeological Material Not Associated with Human Remains

Materials recovered during survey, evaluation and data recovery efforts will be curated at a facility that meets the criteria set forth in 36 CFR 79 (e.g., California State University—Stanislaus [Turlock]). Items considered to be of a sacred and/or ceremonial nature as agreed upon by the MLD will be returned to the appropriate Yokuts Indian tribal organization.